



Council of Europe  
Platform to promote the protection of journalism and safety of journalists  
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**Reference**  
2023-0000161229

**Your reference**  
Alert no. 252/2022

*Transmitted by the Dutch Permanent Representation to the Council of Europe*

Date 27 March 2023  
Subject Response to alert Platform of journalists of the Council of Europe (no. 252/2022)

With reference to alert no. 252/2022, I would like to take the opportunity to respond to the claim that a Dutch journalist has been under surveillance for several decades.

First I would like to stress that the freedom and safety of the press are essential to a democratic society. It is imperative that journalists can do their work independently and unhampered at all times. Furthermore, the right to source protection is indispensable. Journalists' sources must also be free and safe, and their identity must be protected.

However, this does not mean that journalists because of their profession are categorically exempted from being investigated by the General Intelligence and Security Service (AIVD). Journalists might be subject or could be part of an investigation in case of exceptional and compelling reasons regarding to national security. In light of the importance of the protection of journalist sources, such investigations and the use of special investigatory powers are subject to very strict demands. Established in jurisprudence by the European Court of Human Rights, the Intelligence and Security Services Act 2017 (Wet op de inlichtingen- en veiligheidsdiensten 2017, Wiv2017) includes strict procedural requirements for the investigation of journalists which may involve the acquisition of data regarding the journalist's sources. The use of special investigatory powers requires the permission of the District Court of The Hague, which is only valid for a period up to a maximum of 4 weeks (with the possibility to apply for an extension). Additionally, cases involving journalists require a stricter proportionality check than is usual in most other cases. The implementation of these and other special investigatory powers are carried out under the supervision of the independent Oversight Committee for the Intelligence and Security Services (Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten, CTIVD). These safeguards, which also include independent legal checks, underline the importance that the Netherlands attaches to free and safe gathering of news. Other than the exceptional situation that a journalist is indeed being investigated by the AIVD, there are no circumstances under which the security services will build a record on a journalist. However, there are circumstances under which the

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23 februari 2023

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name and/or other personal data of a journalist may appear in the AIVD databases without a record being built. For example, when the AIVD takes cognisance of a journalist's publications which relate to its own investigations, or when the name of a journalist is mentioned in media reports which are processed by the AIVD. In such instances the name of a journalist may appear in AIVD systems without said journalist him- or herself being (or having been) investigated by the AIVD.

Pursuant to the Wiv2017, an applicant may file a request with the Minister of the Interior and Kingdom Relations to ascertain whether and, if so, which personal data about the applicant has been collected and processed by the AIVD. Should, in such a request for access to information, personal data be found on the applicant that can be furnished to them in compliance with the provisions of Section 3 of the Wiv2017, this data will be provided to the applicant. This data will be presented to the applicant as a so-called consultation dossier, bundling all concerning documents available within the information systems of the AIVD. The existence of any of these documents as well as the bundling of files for the purpose of the request for access to information does not mean that the applicant has been a subject of investigation for the AIVD, or that the AIVD has previously built a record on this person.

Yours sincerely,

On behalf of the Minister of the Interior and Kingdom Relations,



Prof. W. van der Woude  
Director Constitutional Affairs and Legislation